

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



ORIGINAL

75-1270

**United States Court of Appeals**

**For the Second Circuit.**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

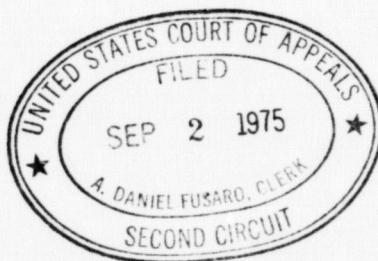
-against-

ERNEST OLSEN,

Defendant-Appellant.

*On Appeal From The United States District  
Court For The Eastern District of New York*

**Appellant's Appendix**



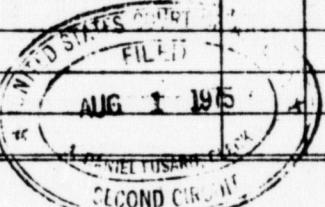
**IRVING KATCHER**  
Attorney for Defendant-Appellant  
38 Park Row  
New York, N.Y. 10038  
(212) 227-0073

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
Docket Entries-----	A1
Indictment-----	A5
Judge's Charge-----	A9
Sentencing Minutes-----	A62
Judgment and Commitment Order-----	A74
Notice of Appeal-----	A75

MUI NGAU	A1	FONG- Sara Halbert 277 Broadway N.Y. N.Y. 10007 W04-8330
WONG SUM YI	JEAN LIU	
PER BUUS HANSEN		
X GEORGE SUN	X TAM WING GIT a/k/a "Hom Wing Git"	For Defendant: GEORGE SUN
CHENG KAM CHEUNG		
YEUNG TAK	and BENNY FONG	Court assigned Counsel:
✓ ERNST OLSEN		Legal Aid
LENNART BO HOLMGREN		LOUIE-Maurice Kozinn- 225
KJELD V. KROGH		Broadway N.Y. EA7-8343
conspire to heroin & & to conceal same	WONG YIU CHEUNG	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		7/17/74	Notice of appeal (Olson)	100	
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					
					

DATE	PROCEEDINGS
10-9-74	Before Costantino J - Indictment filed - ordered sealed by the Court. Bench Warrants Ordered for all defts.
10/15/74	Bench warrants issued
11-20-74	Before WEINSTEIN J - case called - Deft George Sun & counsel Legal Aid present - Lauro Ho sworn as interpreter - sealed indictment ordered opened - Simon Chrein of Legal Aid assigned as counsel for deft SUN. Deft arraigned and enters a plea of not guilty - clerk to assign this case to a Judge of this Court. Bail \$10,000.
1-20-74	Before MISHLER, CH J - case called - deft GIT produced in court on a Bench Warrant without counsel - Interpreter Lawn Ho present - deft arraigned and the court enters a plea of not guilty in his behalf - court to appoint counsel for the deft. Bail set at \$25,000 P/R Bond signed by the wife and son and secured by the

74CR 626 A2

PROCEEDINGS

equity of 2 houses.

1-20-74 Before MISHLER, CH J - case called - deft JEAN LIU produced in court on a bench warrant without counsel - deft arraigned and the court enters a plea of not guilty on behalf - court to appoint counsel for the deft. Bail set at \$25,000 P/R Bond.

1/22/74 Before MISHLER, CH.J.- Case called- Oral motion argued for bail reduction as to deft GEORGE SUN- Bail modified to a \$10,000.00 P?R? Bond

1/26/74 Petition for writ of habeas corpus ad prosequendum filed (BENNY FONG)

1/26/74 By MISHLER, CH.J.- Writ issued, ret. 12/5/74 (BENNY FONG)

1-27-74 Petition for Writ of Habeas Corpus ad prosequendum filed (LEE LOUIE)

11-27-74 By MISHLER, CH J - Writ Issued, ret. Nov. 27, 1974) " "

11/27/74 Befpre MISHLER, CH.J.- Case called- Deft LEE LOUIE brought into court on writ- Interpreter sworn- Deft arraigned and waives reading of the indictment and enters a plea of not guilty- deft in custody and case adjd without date

1/27/74 Notice of appearance filed (LEE LOUIE)

2/3/74 Writ retd and filed- executed (LEE LOUIE)

12/5/74 Before MISHLER, CH.J.- Case called- Deft BENNY FONG present without counsel Court to appoint counsel for the deft- deft arraigned and enters a plea of not guilty on behalf of the deft- Bail set at \$3,000 Surety Bond

12-6-74 Magistrate's files 74 M 1637 , 1638 and 1653 inserted into CR file.

12/20/74 Petition for writ of habeas corpus ad prosequendum filed (OLSEN)

2/20/74 By MISHLER, CH.J.- Writ issued, ret. 12/26/74

2/26/74 Before MISHLER, CH.J.- Case called- Deft OLSEN and counsel present- Deft arraigned and enters a plea of not guilty- Bail set \$300.00 surety Bond Trial set for 3/21/75

12/26/74 By MISHLER, CH.J.- Order appointing counsel filed (OLSEN)

2/27/74 By MISHLER, CH.J.- Order appointing counsel filed (BENNY FONG)

2/30/74 Writ retd and filed- exeduted (OLSEN)

1/2/75 By MISHLER, CH.J.- Certificate of Engagement filed

1-20-75 Certificate of Engagement filed to counsel setting case originally scheduled for trial Mar. 31, 1975 has been adjd to April 7, 1975. Previous Certificate of Engagment dated Dec. 31, 1974 is null and void.

2/13/75 Magistrate's file 74 M 1724 inserted into CR file.

2-26-75 Govts Notice of Readiness for Trial filed(OLSEN & BENNY FONG)

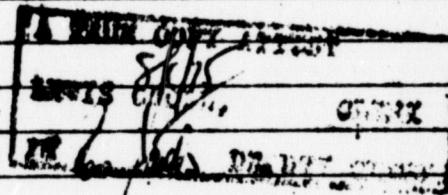
1-26-75 Govts Notice of Readiness for Trial filed (GEORGE SUN, LEE LOUIE, JEAN LIU and TAM WING GIT.)

3-13-75 Before Mishler, Ch J - case called - deft FONG & counsel Sora Halbert

DATE	PROCEEDINGS
	present - motion by deft for dismissal of the indictment as indicated on the record is granted as to deft Fong - with the consent of the Govt.
13-75	By MISHLER, CH J - Order of dismissal filed (Fong)
18-75	Writ returned and filed - executed (Fong)
24-75	Voucher for compensation of counsel filed (Fong)
27-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed (Olsen)
27-75	By PLATT, J - Writ issued, ret. 4-2-75.
7-75	Before MISHLER, CH J - case called - deft Olsen & counsel present - deft Liu severed from the trial - trial ordered & BEGUN - Interpreter present - Jurors selected and sworn - trial contd to 4-8-75.
8-75	By MISHLER, CH J - Order filed that the contents of this Order and affidavit be sealed and not made available until further order of this court.
8/75	Before MISHLER, CH.J.- Case called- Deft OLSEN present with counsel- Trial resumed - Interpreter present- Trial contd to 4/9/75 at 10:00 A.M.
9-75	Before MISHLER, CH J - case called - deft Olsen present with counsel Irving Katcher - trial resumed - Interpreter Mr. Hesselund-Jensen present - motion by deft for judgment of acquittal is denied - deft rests - trial contd to 4-10-75 @ 9:30 am.
10/75	Before MISHLER, CH.J.- Case called- Deft OLSEN and counsel present- Interpreter present- Trial resumed- Jury charged- Marshal sworn-Jury retires to deliberate- Jury returns and renders a verdict of guilty on counts 1,2,3- Jury polled- Jury discharged- Trial concluded-All motions reserved until time of sentence-sentence adjd without date(ERNEST OLSEN)
10/75	By MISHLER, CH.J.- Order of sustenance filed
11-75	Voucher for compensation of expert services filed (Olsen)
16/75	Stenographers Transcripts dated 4/8/75, 4/9/75 and 4/10/75
16/75	Before MISHLER, CH.J.- Case called- Deft GIT and SUN present with counsel On motion of A.U.S.A. Clayman the indictment is dismissed- as to deft GIT and SUN Sentence as to deft Olsen adjd to 6/6/75 on consent
6/75	By MISHLER, CH.J.- Orders (2) of dismissal filed(HOM WING GIT a/k/a and GEORGE SUN)
6-75	Before MISHLER, CH J - case called - sentence adjd to 6-20-75 on consent (Olsen)
12/20/75	Before MISHLER, CH.J.- Case called- Deft OLSEN and counsel present- Interpreter present-sentence adjd to 7/11/75 on consent

## PROCEEDINGS

11/75 Before MISHLER, CH.J.- Case called- Deft OLSEN's motion to vacate denied-motion to dismiss counts 2 and 3 are denied-deft sentence term of imprisonment for a period of 5 years on each of counts 1 said terms to run concurrently Clerk to file notice of app  
7/11/75 Judgment and Commitment filed- certified copies to Marshal  
7/11/75 Notice of appeal without fee filed(OLSEN) <sup>cop</sup>  
7/11/75 Docket entries and duplicate of notice of appeal mailed to ~~mail~~ appeals  
7/15/75 Certified copy of Judgment and Commitment ret'd and filed- copies to Federal Detention Headquarters(OLSEN)  
7-31-75 Order received from the Court of Appeals that the Index to ~~Index~~ be docketed on or before August 4, 1975 (Olsen)



FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D. N.Y.  
OCT 9 1974

A5

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

X  
TIME A.M. ....  
P.M. ....

UNITED STATES OF AMERICA

Cr. No. 74 CR 627

-against-

LUI NGAU,  
WONG SUM YI,  
PER BUUS HANSEN,  
GEORGE SUN,  
CHENG KAM CHEUNG,  
YEUNG TAK,  
ERNST OLSEN,  
LENNART BO HOLMGREN,  
KJELD V. KROGH,  
WONG YIU CHEUNG,  
TUNG YAU SANG,  
LEE LOUIE,  
JEAN LIU,  
TAM WING GIT, A/K/A "Hom Wing Git"  
and BENNY FONG,

(T. 21, U.S.C. §§173 and 174  
and T. 18, U.S.C. §2)

Defendants.

X  
THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 1st day of January 1969,  
and the 30th day of June 1970, both dates being approximate and  
inclusive, within the Eastern District of New York and elsewhere,  
LUI NGAU, WONG SUM YI, PER BUUS HANSEN, GEORGE SUN, CHENG KAM  
CHEUNG, YEUNG TAK, ERNST OLSEN, LENNART BO HOLMGREN, KJELD V.  
KROGH, WONG YIU CHEUNG, TUNG YAU SANG, LEE LOUIE, JEAN LIU, TAM  
WING GIT, also known as "Hom Wing Git" and BENNY FONG, the defendants,  
together with Cheung Keng Fai, Ngau Sau Tung, Wong Shing Kong, Kin  
San Lam and George Wong, named herein as co-conspirators but not  
as defendants, and others known and unknown to the Grand Jury,  
wilfully, knowingly and unlawfully did combine, conspire, confederate  
and agree together and with each other to violate Sections 173 and  
174 of Title 21, United States Code.

1. It was part of said conspiracy that the defendants  
and co-conspirators fraudulently and knowingly would import and  
bring into the United States large quantities of heroin and opium.

narcotic drugs, contrary to law.

2. It was further a part of said conspiracy that the defendants and co-conspirators unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of large quantities of heroin and opium, narcotic drugs, after the narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

3. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts were committed within the Eastern District of New York and elsewhere:

O V E R T   A C T S

1. In or about January 1969, the defendants LUI NGAU and WONG SUM YI, met with co-conspirator Wong Shing Kong in Singapore.

2. In or about March 1969, the defendant PER BUUS HANSEN removed approximately five (5) kilograms of opium from the M. S. Nicoline in Brooklyn, New York.

3. In or about March 1969, the defendant CHENG KAM CHEUNG received approximately five (5) kilograms of opium in Brooklyn, New York.

4. In or about August 1969, the defendant YEUNG TAK met with co-conspirator Wong Shing Kong and Cheung Keng Fai in Hong Kong.

5. In or about November 1969, the defendant ERNST OLSEN carried approximately two (2) kilograms of heroin aboard the M.S. 'Lexa Maersk' in Manila, Philippines.

6. In or about January 1970, the defendant ERNST OLSEN sent a cable to the defendant GEORGE SUN in Brooklyn, New York.

7. In or about January 1970, the defendant ERNST OLSEN, LENNART BO HOLMGREN and KJELD V. KROGH, removed approximately five (5) kilograms of heroin and ten (10) kilograms of opium from the U. S. Steel Works in Brooklyn, New York.

8. In or about January 1970, the defendant LEE LOUIE met with the co-conspirators Wong Shing Kong and Kin Sang Lam in New York, New York.

9. In or about February 1970, the defendant JEAN LIU received approximately three (3) kilograms of opium in New York, New York.

10. In or about February 1970, the defendant TAM WING GIT, also known as "Hom Wing Git" received approximately three (3) kilograms of opium in Brooklyn, New York.

11. In or about February 1970, the defendant TUNG YAU SANG received approximately two (2) kilograms of opium and one (1) kilogram of heroin in New York, New York.

12. In or about April 1970, the defendant WONG YIU CHEUNG delivered approximately one (1) kilogram of heroin to co-conspirator George Wong in New York, New York.

13. On or about June 2, 1970, the defendant BENNY FONG sold approximately one-half (1/2) kilogram of heroin in New York, New York.

COUNT TWO

In or about January 1970, within the Eastern District of New York, the defendants LUI MGAU, WONG SUM YI, PER BUUS HANSEN, GEORGE SUN, CHENG KAM CHEUNG, YEUNG TAK, ERNST OLSEN, LENNART BO HOLMGREN, KJELD V. KROGH, WONG YIU CHEUNG, TUNG YAU SANG, LEE LOUIE, JEAN LIU, TAM WING GIT, also known as "Hom Wing Git" and BENNY FONG, fraudulently and knowingly did import and bring into the United States approximately five (5) kilograms of heroin, a narcotic drug, contrary to law. (Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2).

A8

343  
COUNT THREE

In or about January 1970, within the Eastern District of New York, the defendants IUI NGAI, WONG SUM YI, PER BUUS HANSEN, GEORGE SUN, CHENG KAM CHUNG, YEUNG TAK, ERNST OLSEN, LENNART BO HOLMGREN, KJELD V. FROGH, WONG YIU CHEUNG, TUNG YAU SANG, LEE LOUIE, JUAN LIU, TAM WING GIT, also known as "Hom Wing Git" and BENNY FONG, fraudulently and knowingly did import and bring into the United States approximately ten (10) kilograms of opium, a narcotic drug, contrary to law. (Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2).

A TRUE BILL

**FOREMAN**

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York

1 (After recess:)

2 (Jury entered jury box at 10:45 A.M.)

3 CHARGE OF THE COURT:

4 THE COURT: Mr. Foreman and ladies and  
5 gentlemen of the jury:

6 We have reached that point in the trial  
7 where it becomes my duty to charge you on the  
8 applicable law. I think a good starting place  
9 would be to give you some understanding of what  
10 each participant in a trial is obliged to do.

11 First, we have the lawyers, and they repre-  
12 sent clients.

13 They are involved in their client's position  
14 and point of view, and they are adversaries. That  
15 means that they compete with each other over  
16 contested issues of fact. One takes one position  
17 and the other, the other position.

18 The theory is that when two lawyers of  
19 comparable ability compete, are contestants over  
20 a matter, the evidence in the case will develop  
21 for the jury to see.

22 Now, the lawyers are partial and that is  
23 the way it should be, because they are interested  
24 in the rights of their respective clients, and  
25 they are there to further the rights of the

1 clients; Mr. Clayman on behalf of the Government,  
2 and Mr. Katcher on behalf of Mr. Olsen. As between  
3 the two, they are treated equally.

4 Mr. Clayman and the Government have no  
5 special place in this court because it is the  
6 United States of America. He stands on an equal  
7 footing with Mr. Katcher and the United States of  
8 America stands on equal footing with Mr. Olsen and  
9 that is the way it should be -- no favorites here.

10 There are certain obligations placed upon the  
11 Government and they must fulfill them.

12 The jury is described as the judges or  
13 arbiters of the facts. The jury and only the jury  
14 decides what happened here. The Court is the sole  
15 judge of the law. I made my determinations and  
16 rulings throughout the trial as a matter of law, and  
17 you, as jurors, must view the evidence objectively,  
18 dispassionately and solely with a view toward  
19 doing justice in the case.

20 You can only do justice in the case and be fair  
21 if you are ready to do so, if you want to do so and,  
22 that is your obligation.

23 Sift through the evidence and make your  
24 determinations. Just as I make my determinations on  
25 matters of law, you make your determinations on

### Charge

2                   questions of fact. Then, determining what happened,  
3                   you apply the law as I charge it.

4 Now, I accept your finding as I must, and  
5 you must accept my charge, even though you disagree  
6 with it, even though it may be distasteful to you.

7 I charge the law as I find it and as I  
8 believe it to be, and you must accept it as I charge  
9 it and that makes for uniformity and predictability.

10 If each jury or each juror decided that he  
11 or she would make his or her own law for each case,  
12 we would have chaos. It is only fair that everyone  
13 should be judged by the same law.

2 does the presumption of innocence give way, only  
3 then is it overcome.

4 If the Government fails in sustaining its  
5 burden of proof, then you must find the defendant  
6 not guilty.

7 I find that a reference to what we call a  
8 Scotch verdict is helpful. You have heard the  
9 term, "Oh, it was a Scotch verdict."

10 In Scotland, they have three verdicts;  
11 "Guilty, Not Guilty" and "Not Proved."

12 In this country we have only two: "Guilty"  
13 and "Not Guilty" and "Not Proved" is included in  
14 "Not Guilty."

15 So, your real function here is to determine  
16 whether the Government has sustained its burden  
17 of proof, and you are not to speculate on whether the  
18 defendant did it or didn't do it.

19 Now, a reasonable doubt is a doubt which  
20 a reasonable person would have after weighing all the  
21 evidence in the case. A reasonable doubt is a doubt  
22 based on reason and common sense and the state of  
23 the record, which means the evidence as distinguished  
24 from speculation, surmise or as distinguished from  
25 some emotional doubt you might have, such as a

## Charge

466

2 doubt that might arise from the unpleasantness of  
3 the duty of finding a defendant guilty.

4 A reasonable doubt is not a vague,  
5 speculative or imaginative doubt. A reasonable  
6 doubt is the kind of doubt that would make a  
7 reasonable person hesitate to act in the most  
8 important of his or her own affairs.

9 Proof beyond a reasonable doubt is  
10 therefore proof of such convincing character that  
11 you would be willing to rely and act upon it  
12 unhesitatingly in the most important and weighty of  
13 your own affairs.

14 The Government's burden is not to prove the  
15 guilt of the defendant beyond all possible doubt.  
16 There is a qualifying adjective -- "beyond a  
17 reasonable doubt."

18 The Government's burden is not to prove that  
19 every bit of evidence offered before you is true  
20 beyond a reasonable doubt.

21 The Government's burden is to prove all the  
22 essential elements of the crime charged beyond a  
23 reasonable doubt.

24 In other words, I will tell you that the  
25 various parts of the crime are the essential elements

## 1 Charge

467

2 constituting the whole crime, and you must find  
3 that the Government proved all those essential  
4 elements by proof beyond a reasonable doubt.

5 A reasonable doubt may arise from the failure  
6 of the Government to produce evidence.

10 As I indicated, the defendant may rely on the  
11 failure of the Government to prove the guilt of the  
12 defendant beyond a reasonable doubt.

13 Evidence is a method that the law uses to  
14 prove or disprove a disputed fact. There are  
15 two general classifications of evidence; one is  
16 direct evidence and the other is indirect or  
17 circumstantial evidence.

18 Direct evidence is the testimony of a  
19 witness as to what that witness saw or heard.

20 Circumstantial evidence is a method of  
21 proving a disputed fact used by the jury employing  
22 their good common sense and experience in drawing  
23 a conclusion and inference from all the circumstances  
24 that have been established.

I find the definition itself unsatisfactory

1 and I think an example will demonstrate it  
2 to you.

3 If you were sitting here as a juror in a civil  
4 case, this particular principle would apply  
5 distinguishing direct evidence from indirect or  
6 circumstantial evidence.

7 Let's assume you were listening to a case  
8 involving a personal injury, A suing B.

9 Let's assume that A claimed that B passed  
10 a stop sign located at a certain intersection  
11 without stopping and struck A, causing certain  
12 injuries.

13 Well, if my courtroom deputy, Mr. Adler and  
14 myself were standing on the street corner, and my  
15 back was to the stop sign and Mr. Adler was  
16 facing me, and he had the stop sign and the roadway  
17 in full view, he would testify differently than I  
18 would because he saw things that I did not see.

19 To demonstrate the difference it is necessary  
20 to identify the contested issue.

21 B says in effect, "I stopped at the stop  
22 sign and then proceeded."

23 A says, "Oh, no. You were travelling along  
24 the roadway and passed that stop sign without stopping."

If Mr. Adler were called, having seen what occurred at the stop sign, he could give direct testimony on that issue as to whether or not the motor vehicle stopped at the stop sign.

He states, "Well, I was talking to the Judge at that particular time and place," and gives lighting conditions and probably weather conditions, but the important thing is he would probably say, "Well, I saw the defendant B travelling in his white Cadillac at about 60 miles per hour and I saw him pass the stop sign without stopping and strike the plaintiff, A."

Now, that is direct testimony on that issue.

If I were called to the stand, I could not testify that I saw the car pass the stop sign without stopping. Rather, I could only testify to the circumstances and I might say, "As I turned to my left, while talking with Mr. Adler, a white Cadillac came within my peripheral vision and I saw it travelling at about 60 miles per hour. I lost sight of it for about one hundred fifty feet, and 2 or 3 seconds later, I again saw the same car travelling at the same speed, strike the plaintiff and cause the injuries."

## Charge

Now, the circumstances are that the car  
was travelling 60 miles an hour; that it traversed  
about 150 feet in a matter of 2 or 3 seconds  
and struck the plaintiff. I think it would be  
fair to assume and infer that that motor vehicle  
passed the stop sign without stopping.

8 Now, you will be called upon in this case,  
9 to draw inferences based on good common sense and  
10 experience.

11 One of the questions you will be called upon  
12 to determine is what the substance was, if you  
13 believe that there was dealing in a substance.

14 The Government claims it was opium and heroin.  
15 The Government must prove that beyond a reasonable  
16 doubt.

Again, you may take into consideration the  
conversations, the surreptitious manner in which  
the substance was handled, if you believe it was  
concealed in one of the cabins aboard the ship,  
concealed under the refrigerator, the price paid  
for it, the manner in which it was transported.

23 From all that, in addition to the way the  
24 parties described it, you decide whether the  
25 Government has proved that the substance that the

2 parties dealt in was opium and/or heroin.

3 Obviously, the physical substance is not  
4 here, but you will be called upon to determine  
5 from all of the circumstances, as to what that  
6 substance was, or to put it more correctly and  
7 accurately, whether the Government proved beyond  
8 a reasonable doubt what the substance was.

9 (continued next page.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25ig;pc  
take 3am/2  
Charge

472

THE COURT: (continuing) But what is the evidence in the case? The evidence is the testimony of the witnesses and the exhibits that were marked in evidence.

Now, there were some exhibits that were marked for identification. For example, sometime this afternoon during your deliberations, if you ask me for Special Agent O'Grady's report, I will not give it to you because it is not in evidence. It was just marked for identification, and that is exactly what it means, it is to identify the document with the testimony that was given by the witness, because the witness, if you recall, was handed the document and it was designated as "exhibit so and so for identification."

But, it is not in the record. It is not in evidence and you may not see it.

However, you may see all the other exhibits that are marked in evidence.

In addition, the stipulation that was entered into between the lawyers is part of the record and evidence in the case, and on that and on the fair and reasonable inferences drawn from the established facts, you will come to your

1 Charge

473

2 determination -- nothing else. Good common  
3 sense, experience, is the proper ingredient. It is  
4 the tool through which you will seek, and I am  
5 sure find, the truth -- not bias, not prejudice,  
6 not emotion.

7 It may be of help to you if I indicate  
8 what was not part of the record, what was not  
9 evidence in the case.

10 For example, the opening statements made  
11 by counsel are very helpful to the jury, but they  
12 are not evidence. Statements by the Court are  
13 not evidence. I said very little in this case.  
14 I recall asking a few questions, but the statements  
15 by the Court are not evidence. I was not sworn.  
16 I was not under oath. I didn't submit to cross  
17 examination, so if I made some statements, whether  
18 appropriate or not, they are not evidence.

19 The summations by the lawyers are not  
20 evidence. They dealt with the evidence. They  
21 quoted, or at least if they didn't quote, they  
22 referred to it, but it is your recollection as to  
23 what was said that counts and what is in the  
24 exhibits that counts, not what counsel said the  
25 testimony was.

Again, that is to aid you in your duty to  
finding out what happened.

Each one argued the evidence, and that was to focus on what the lawyers felt was the important part of the evidence. But, the statements of counsel are not evidence.

There were times, and very few times that objection was sustained to a question. You may not speculate on what the answer might have been if the witness were allowed to answer. Again, the Court said, "Don't answer." So, it is not for you to wonder or think about what the witness would have said. It is not in the record and therefore cannot be considered by you.

The most important task you have is to assess the credibility, the believability of the witnesses.

You, the jurors, are the sole judges of the credibility of the witnesses, which means the believability of their testimony and the weight their testimony deserves.

It is your duty to scrutinize the testimony given and the circumstances under which witnesses testify, and every matter in evidence which tends

2 to show whether a witness is worthy of belief.

3 In your business, in your social life, you  
4 have weighed the credibility of people; your  
5 respective spouses, and if they told a little fib,  
6 you recognized it; your children, if they weren't  
7 exactly telling the truth, your friends -- you have  
8 done it.

9 Here, you are called upon to do it under  
10 more or less formalized rules, but it is no  
11 different than what you have been doing. You are  
12 thoroughly experienced in weighing evidence and  
13 though you don't believe it at this point, you will  
14 learn that you can deal with the evidence.

15 You take into consideration the intelligence  
16 of the witnesses, the difficulty that they have in  
17 language, the motive and state of mind of the  
18 witness, why the witness is testifying, are his  
19 reasons for testifying those which would indicate  
20 that he would lie?

21 Take into consideration the demeanor and  
22 the manner in which the witness testified while on  
23 the witness stand. Did the witness give direct and  
24 full answers to questions? Was he evasive? Did  
25 he try to hide something?

2 Take into consideration the witness' own  
3 ability to observe the matters to which he testified;  
4 whether he shall have impressed you as having an  
5 accurate recollection of the events to which he has  
6 testified.

7 Take into consideratin the relationship the  
8 witness bears to either side of the case, the manner  
9 in which the witness may be effected by the verdict,  
10 the extent to which the witness is contradicted or  
11 corroborated by other evidence in the case.

If you find that a witness has knowingly  
12  
13 testified falsely concerning a material matter, you  
14 have a right to distrust all the testimony that  
15 that witness gave, or you may decide to accept a  
16 portion of that witness' testimony that you recognize  
17 as credible. That principle just underscores the  
18 wide discretion the jury has in assessing  
19 credibility.

20 You may find a witness lied as to a material  
fact and that he did it intentionally and  
knowingly.

23 Well, you may say: "I won't believe anything  
24 that witness says;" or, you may say, "I know he  
25 lied as to that but I think he told the truth as

2 to this" and again, that is good common sense and  
3 experience.

4 The law does not compel a defendant in a  
5 criminal case to take the stand and testify. No  
6 inference of guilt may be raised and no other  
7 unfavorable inference of any kind may be drawn from  
8 the failure of the defendant to testify.

9 A defendant, as previously charged may  
10 rely on the Government's failure to prove the  
11 defendant's guilt. It would be improper of the  
12 jury to discuss the defendant's failure to testify  
13 during its deliberations.

14 Mr. Wong Shing Kong, whom I will refer to  
15 as Mr. Wong, says he participated in the alleged  
16 crime. His statement that he participated should  
17 not be charged against this defendant. That is his  
18 statement, Wong's statement, "I participated. I did  
19 it. I committed criminal acts."

20 An alleged accomplice, which Mr. Wong is --  
21 and the others too, I might include, because they  
22 say they participated in some respects in other  
23 crimes -- an alleged accomplice does not become  
24 incompetent as a witness because of his participation  
25 in the crime charged. On the contrary, the

2 testimony of an alleged accomplice alone, if  
3 believed by the jury to be true beyond a reasonable  
4 doubt, may be of sufficient weight to sustain a  
5 verdict of guilty, even though not corroborated or  
6 supported by other evidence.

7 However, the jury should keep in mind that  
8 such testimony is always to be received with caution  
9 and weighed with great care. You should never  
10 convict a defendant upon the unsupported testimony  
11 of an alleged accomplice, unless you believe such  
12 unsupported testimony to be true beyond a  
13 reasonable doubt.

14 All of the Government's witnesses have been  
15 convicted of felonies. The testimony of a witness  
16 may be discredited or impeached by showing that the  
17 witness has been convicted of a felony.

18 A felony conviction does not render a witness  
19 incompetent to testify, but is merely a circumstance  
20 which you may consider in determining the credibility  
21 of the witness. It is the province of the jury to  
22 determine what effect the conviction has on the  
23 testimony.

24 The defendant has pointed out prior statements  
25 made by the witnesses, particularly Mr. Wong. I

1

2 don't direct this solely to Mr. Wong's testimony.

3

4 It may have been to others, but if so, I don't recall  
5 it. However, it applies to the others if you find  
6 they made prior statements.

7

8 The defendant says, in effect, "those prior  
9 statements made to Special Agent O'Grady or in the  
10 Grand Jury or anybody else" -- but those are the  
11 only two places I can think of where Mr. Wong made  
12 statements -- in the Grand Jury and to Agent O'Grady  
13 -- but if there are others, it applies to that too  
14 -- and the defendant offered those prior statements  
15 on the ground that they were inconsistent with the  
16 testimony given by Mr. Wong before you.

17

18 At times, for example, I can recall Mr. Wong,  
19 in the statement that he hand-wrote in Chinese, he  
20 said, "The westerner" --

21

22 MR. CLAYMAN: That is Mr. Lam.

23

24 THE COURT: I'm sorry. That is Mr. Lam. Yes.  
25 I saw the jury disagreeing with me.

26

27 Yes, Mr. Lam Kin Sang whom I will call Mr.  
28 Lam made reference to "the westerner."

29

30 Well, the defendant is, in effect saying,  
31 "the westerner could mean anybody" and he didn't  
32 mention Olsen, so the failure to mention Olsen is  
33

## Charge

480

inconsistent with what he said before you.

3 Now, my questioning the position of the  
4 Government or the defendant does not mean I  
5 believe either argument. That is solely a question  
6 for you. I am just pointing out the example to  
7 demonstrate the principle.

14 The position of the defendant is that the  
15 statement that Mr. Olsen was recruited in 1971 was,  
16 in effect, a statement that he first met Mr. Olsen  
17 in 1971.

24 Now, it is for you and you alone to decide  
25 whether the prior statement was inconsistent with

what Mr. Wong or Mr. Lam said here, and if you decide that the prior statement was inconsistent, you decide whether it was inconsistent to a material or immaterial fact, and then you decide the effect it has on the credibility of that witness' testimony.

Now, if the witnesses said exactly the same thing when they repeated the version of what occurred, said it exactly the same way, gesture for gesture and pause for pause, you probably would suspect the credibility of that witness, because it would appear to be rehearsed. There is a certain amount of variation and variance that we can expect from people telling the truth and people attempting to tell the truth, and then that is a matter of common sense and experience.

(continued next page.)

ake 4/1 2 THE COURT: (continuing) You and I know  
3 that three people can see the same thing and attempt  
4 to testify truthfully to everything they saw and  
5 each one will tell it differently than the other,  
6 and you know that people who you regard as truthful  
7 can attempt to repeat what occurred on a number of  
8 occasions and you'd expect some normal variation.

9 You decide, if you find an inconsistency,  
10 whether it is a normal variation in the retelling  
11 or whether it is an inconsistent statement and  
12 should affect credibility.

13 Again, I say you find to what extent  
14 credibility is affected.

15 Now, we turn to the indictment.

16 I will first read the statute on which the  
17 indictment is based. The Congress determines what  
18 is a crime, and so it is a violation of a section  
19 of a statute enacted by the Congress that brings  
20 forth the form of charge in the indictment.

21 Most of federal law is codified. They are  
22 in books like this and they have titles.

23 This title is "Food and Drugs, Title 21."

24 That's why, when I read the indictment and  
25 you hear some numbers, you will know I am reading

2 Section 173 and 174 of Title 21 of the United States  
3 Code. I will only read the pertinent portions of it.  
4 These sections of Title 21 are designed to very  
5 closely supervise and control the importation, the  
6 processing, the sale, the distribution and  
7 transportation of narcotics.

8 Section 173 bars all heroin and opium from  
9 entering into this country, except for certain  
10 medicinal purposes, where the commissioner finds it  
11 necessary for either medicinal or experimental  
12 purposes.

13 I will just read the first portion of it:

14 "It is unlawful to import or bring any  
15 narcotic drug into the United States or any territory  
16 under its control or jurisdiction except" -- and  
17 then it goes on with the exceptions, which are not  
18 pertinent here.

19 Section 174 defines the criminal statute  
20 and it says:

21 "Whoever fraudulently or knowingly imports  
22 or brings any narcotic drug into the United States  
23 or any territory under its control or jurisdiction,  
24 contrary to law, or receives, conceals, buys, sells  
25 or in any manner, facilitates the transportation,

concealment or sale of any such narcotic drug  
after being imported or brought in, knowing the  
same to have been imported or brought into the United  
States contrary to law, or conspires to commit any  
such acts in violation of the laws of the United  
States, violates the statutes", commits a crime.

Now I charge you that opium and heroin, which  
is a derivative of crude opium, is a narcotic drug  
under this section.

I will read the three counts in the indictment,  
but count 1 is a different type of a crime.  
Conceptually, it is distinct from the crimes charged  
in count 2 and count 3.

The idea in count 1 is that the proscription  
-- the prohibition stated in the statute, is the  
agreement to commit the crime, while in count 2 and  
3, it is the actual crime itself.

Count 1 charges defendant, together with  
others, agreeing to import, to buy, to sell, to  
conceal and facilitate its transportation. So as  
you will see, it is not necessary to approve the  
accomplishment, the fulfillment, in order to prove  
the conspiracy charge.

While on the other two charges, the

1 Charge 485

2 Government must prove the actual happening, that  
3 there was the importation in the one case of the  
4 heroin, and in the other case, of the opium.

I will read the first count. It is kind of lengthy and I must edit it in some way because other defendants are mentioned and other co-conspirators, and I have agreed with counsel that I will eliminate all the other defendants so that you understand this is a charge against Ernst Olsen, and the question before you is not what happened to the others, or why are not they before you at this time. The only question before you is whether the Government has proved the guilt of this defendant by proof beyond a reasonable doubt.

17 Count 1, which is the conspiracy count,  
18 charges as follows:

19 "On or about and between the first day of  
20 January, 1969, and the 30th day of June, 1970,  
21 both dates being approximate and inclusive,  
22 within the Eastern District of New York and  
23 elsewhere, Ernst Olsen, together with Lui Ngau,  
24 Wong Sum Yi, Per Buus Hansen, George Sun, Cheng  
25 Kam Cheung, Yeung Tak, Lennart Bo Holmgren,

2 Kjeld V. Krogh, Wong Yiu Cheung, Tung Yau Sang,  
3 Lee Louie, Jean Liu, Tam Wing Git, also known as  
4 "Hom Wing Git" and Benny Fong, Cheung Keng Fai, Ngau  
5 Sau Tung, Wong Shing Kong, Kin San Lam and George  
6 Wong, named herein as co-conspirators, but not as  
7 defendants, and others known and unknown to the  
8 Grand Jury, wilfully, knowingly and unlawfully did  
9 combine, conspire, confederate and agree together  
10 and with each other to violate sections 173 and  
11 174 of Title 21, United States Code.

12 "1. It was part of said conspiracy that  
13 the defendants and co-conspirators fraudulently  
14 and knowingly would import and bring into the United  
15 States large quantities of heroin and opium,  
16 narcotic drugs, contrary to law.

17 "2. It was further a part of said conspiracy  
18 that the defendants and co-conspirators unlawfully,  
19 wilfully and knowingly would receive, conceal, buy,  
20 sell and facilitate the transportation, concealment  
21 and sale of large quantities of heroin and opium,  
22 narcotic drugs, after the narcotic drugs had been  
23 imported and brought into the United States, knowing  
24 the same to have been imported and brought into the  
25 United States contrary to law.

11 "Overt Act number 1:

12 "In or about January, 1969, the defendants  
13 "Lui Ngau and Wong Sum Yi met with co-conspirator  
14 "Wong Shing Kong in Singapore.

19 "3. In or about March, 1969, the defendant  
20 Cheng Kam Cheung received approximately 5 kilograms  
21 of opium in Brooklyn, New York.

22 " 4. In or about August, 1969, the  
23 defendant Yeung Tak met with co-conspirators Wong  
24 Shing Kong and Cheung Keng Fai in Hong Kong.

25 "5. In or about November, 1969, the

## 1 Charge

2 defendant Ernst Olsen carried approximately 2  
3 kilograms of heroin aboard the M.S. LEXA MAERSK in  
4 Manila, Philippines.

5 "6. In or about January, 1970, the  
6 defendant Ernst Olsen, sent a cable to the defendant  
7 George Sun in Brooklyn, New York.

8 "7. In or about January, 1970, the  
9 defendant Ernst Olsen, Lennart Bo Holmgren and  
10 Kjeld V. Krogh, removed approximately 5 kilograms  
11 of heroin and 10 kilograms of opium from the  
12 M.S. LEXA MAERSK in Brooklyn, New York.

13 "8. In or about January, 1970, the defendant  
14 Lee Louie, met with the co-conspirators Wong Shing  
15 Kong and Kin Sang Lam in New York, New York.

16 "9. In or about February, 1970, the  
17 defendant Jean Liu received approximately 3  
18 kilograms of opium in New York, New York.

19 "10. In or about February, 1970, the  
20 defendant Tam Wing Git, also known as Hom Wing Git,  
21 received approximately 3 kilograms of opium in  
22 Brooklyn, New York.

23 "11. In or about February, 1970, the  
24 defendant Tung Yau Sang received approximately two  
25 kilograms of opium and one kilogram of heroin in

2 New York, New York.

3 "12. In or about April, 1970, the  
4 defendant Wong Yiu Cheung delivered approximately  
5 1 kilogram of heroin to co-conspirator George Wong  
6 in New York, New York.

7 "13. On or about June 2, 1970, the defendant  
8 Benny Fong sold approximately one-half kilogram  
9 of heroin in New York, New York.

10 "Count Two:

11 "In or about January, 1970, within the  
12 Eastern District of New York, Ernst Olsen, together  
13 with Lui Ngau, Wong Sum Yi, Per Buus Handsen,  
14 George Sun, Cheng Kam Cheung, Yeung Tak, Lennart Bo  
15 Holmgren, Kjeld V. Krogh, Wong Yiu Cheung, Tung  
16 Yau Sang, Lee Louie, Jean Liu, Tam Wing Git, also  
17 known as Hom Wing Git and Benny Fong, fraudulently  
18 and knowingly did import and bring into the United  
19 States approximately 5 kilograms of heroin, a  
20 narcotic drug, contrary to law in violation of Title  
21, United States Code, sections 173 and 174."

22 Now, Count Three is exactly the same as  
23 Count Two. It was the same importation, but they are  
24 in two counts because they are two separate drugs.  
25 One was charged to be heroin, and the other is

2 charged to be opium.

3 Count Three reads as follows:

4 "In or about January, 1970, within the  
5 Eastern District of New York, the defendant Ernst  
6 Olsen, together with all those I have just mentioned,  
7 fraudulently and knowingly did import and bring into  
8 the United States approximately 10 kilograms of  
9 opium, a narcotic drug, contrary to law, in violation  
10 of 21 United States Code Section 173 and 174."

11 (continued next page.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: (Continuing) I again want to alert you to the limitation on the use of evidence offered by the Government before the conspiracy started, alleged to be on or about January 1, 1969, and after the conspiracy terminated, which is alleged to be the 30th day of June, 1970.

You judge the defendant on the charges in this indictment, nothing else. The question is whether he committed the crime of conspiracy in this indictment.

Evidence was offered and admitted prior to the beginning of the indictment and subsequent to its termination, solely to determine whether this is the defendant who committed the crimes in this period, and whether the evidence supported the claim here that the crimes were committed by this defendant knowingly and wilfully.

In other words, was he aware of the crime he was committing. Did he do it wilfully, did he do it voluntarily and intentionally, knowing that it was a violation of law?

It is limited to that use.

Now, I indicated to you that a conspiracy was an understanding, an agreement between two or more

2 persons to commit a crime. A conspiracy has been  
3 defined as a partnership in criminal purposes in  
4 which each member becomes the agent of all the  
5 other members of the conspiracy. The gist of the  
6 crime being the agreement of people to get  
7 together in a criminal venture and that is what a  
8 conspiracy is. The members of the conspiracy are  
9 called conspirators or co-conspirators. The mere  
10 similarity of conduct among various persons and the  
11 fact that they have associated with each other,  
12 and may have assembled together and discussed  
13 common names and interests, does not necessarily  
14 establish proof of the existence of a conspiracy.

1 Charge 493

2 in the business of importing opium and heroin, and  
3 that one or more of the members of the conspiracy  
4 described in the indictment committed an overt act  
5 -- did something, even though it is innocent, a  
6 telephone call, a telegram.

12 The Government must prove beyond a reasonable  
13 doubt that it was one member of the conspiracy who  
14 committed an overt act in furtherance of the object-  
15 ives of the conspiracy, knowing that it was for the  
16 purpose of furthering the objectives or purposes  
17 of the conspiracy.

18 One may become a member of the conspiracy  
19 without knowing all the details of the conspiracy.  
20 A person may accidentally, inadvertently do something  
21 that may aid the conspiracy and not realize it, may  
22 not be aware of it.

23 When we talk about the proof required to  
24 bring the defendant into the conspiracy, the  
25 Government must prove beyond a reasonable doubt that

## 1 Charge

494

2 he was aware of what he was doing, that he did not  
3 do it innocently, accidentally or in any other  
4 innocent manner, but that he entered this venture in-  
5 tentionally, voluntarily, knowingly and understanding  
6 that it was a violation of United States law.

7 The Government does not have to prove that  
8 the defendant knew the particular section that was  
9 being violated, but that he knew it was a violation  
10 of law to import and do business in narcotics.

14 Now, there were declarations of others  
15 admitted into evidence and declarations of Mr. Wong,  
16 statements, conversations, outside the presence of  
17 this defendant.

I charged you at the time this evidence was admitted, and I will recall to you what I said. Where the Government establishes the conspiracy, conversations by one conspirator or acts by one conspirator during the course of the conspiracy, and in furtherance of the business or objects of the conspiracy -- which means to help the narcotics business, in this case the opium and heroin business

2 -- does not bind this defendant unless you find that  
3 the defendant knowingly and wilfully entered into  
4 the conspiracy. Once you find that, then he is  
5 bound by what happened during the term of the  
6 conspiracy in furtherance of the objects of the  
7 conspiracy, if those acts and if those conversations  
8 were carried on by a member of the conspiracy.

9 If you do not find all that happened, if you  
10 find the Government did not establish the conspiracy,  
11 that the conversation was conducted by a member of  
12 the conspiracy during the term of the conspiracy,  
13 and in furtherance of the objectives of the  
14 conspiracy, and if you find the Government failed  
15 to prove that the defendant knowingly and wilfully  
16 became a member of the conspiracy, then just  
17 disregard that testimony.

18 The Government must prove the following  
19 essential elements of the crime of conspiracy in  
20 order to establish its case:

21 First, that the conspiracy described in  
22 the indictment was knowingly and wilfully formed  
23 and was existing at or about the time alleged.

24 Second, that the accused, knowingly and  
25 wilfully became a member of the conspiracy.

1 Charge

496

2 In other words, that the defendant was aware  
3 that the conspiracy was organized for the purpose of  
4 importing, selling and distributing opium and  
5 heroin, that he knew it was a violation of law  
6 to enter into such a venture, and that knowing that,  
7 the defendant, nevertheless entered into it.

8 Third, that one of the conspirators,  
9 thereafter knowingly committed an overt act in  
10 furtherance of some object or purpose of the  
11 conspiracy.

12 The following are the essential elements of  
13 the crime charged in count two:

14 First, in or about January of 1970, the  
15 defendant, Ernst Olsen, imported and brought into  
16 the United States approximately 5 kilograms of  
17 heroin.

18 Second. That the defendant, Ernst  
19 Olsen, knew that the substance that he was bringing  
20 into the United States was heroin, and that he  
21 wilfully brought it into the United States, and  
22 again, that was done voluntarily and intentionally  
23 and not innocently, inadvertently.

24 On Count Three, the Government must prove  
25 beyond a reasonable doubt:

## 1 Charge

2                   1. That the defendant, Ernst Olsen, imported  
3                   and brought into the United States 10 kilograms  
4                   of opium.

5                   2. That he imported the opium knowing that  
6                   it was opium and doing such act wilfully.

7 Again, that it was done voluntarily and  
8 intentionally and knowing that it was a violation  
9 of law to import opium.

10 Now, after you have considered all the  
11 evidence in the case and you have arrived at a  
12 verdict, that verdict will be reported to me through  
13 the marshals, who are assigned to the jury.

14 Do not tell me during your deliberations  
15 how you stand at any one time as to any count.  
16 Each count is to be judged separately.

17 To determine whether the Government has  
18 sustained its burden as to each count. When you  
19 have arrived at a verdict, do not tell me what  
20 the verdict is. Do not say, "We find the defendant  
21 guilty or not guilty."

22 Just say, "We have arrived at a verdict."  
23 When that happens, I will call the jury  
24 into the courtroom. I will ask the foreman to  
25 stand and I will say, "In the United States of

1 Charge

2 America against Ernst Olsen, how do you find the  
3 defendant Ernst Olsen as to Count One?"

4 The foreman will tell me; "How do you find  
5 the defendant Ernst Olsen as to Count Two?"

6 Again, the foreman will tell me.

7 "And how do you find the defendant Ernst  
8 Olsen as to Count Three?"

9 Again, the foreman will tell me.

10 I will turn then to Juror No. 2 and say;

11 "You heard the verdict as rendered by the  
12 foreman. Is that your verdict?"

13 And I will go to 2, 3, 4, to 12.

14 When it is announced in open court, it then  
15 becomes the verdict in the case.

16 During your deliberations, you may want some  
17 testimony. It has been transcribed. I will try  
18 to locate what you want and I will read it to you  
19 in open court. Try to identify the witness whose  
20 testimony you would like to hear. If possible,  
21 identify the subject matter. I will give you only  
22 what you ask for and I will try not to give you any  
23 more and I will try not to give you any less. The  
24 exhibits marked in evidence will be sent into the  
25 jury room if you ask for them. If you do not ask

1 Charge

499

2 for them, I won't send them in.

3 Each one of you must arrive at your verdict  
4 through your own mental processes. You are not to  
5 rely on someone else doing the work for you. Each  
6 one of you has that obligation. You must do it  
7 fairly, on the evidence, free of all bias, prejudice,  
8 sympathy, but you have a concomitant obligation to  
9 discuss the evidence with your fellow jurors. You  
10 violate the oath you have taken if you refuse to  
11 talk to any juror on the evidence.

12 If you take an intransigent position and  
13 say, "I think the defendant is guilty," or "I think  
14 the defendant is not guilty," and refuse to talk to  
15 the other jurors, that is not the jury process.  
16 The jury process is a deliberative process.

17 If you have arrived at a tentative verdict  
18 either way, and your fellow jurors convince you that  
19 your original thought is not so, there is nothing  
20 wrong in changing your mind, but you must do it based  
21 upon the evidence. This is a matter of interchange  
22 of views in order to arrive at your verdict. It  
23 would be improper for you to come into the jury  
24 room and say, "Well you decide the case. I'd rather  
25 not, and I will go along with anything you say."

2 That is totally wrong. Each one decides the case,  
3 but communicates with the others, discusses the  
4 case with the others, and in that way, you will  
5 arrive at a fair verdict.

6 I cannot think of anything else I want to  
7 tell you at this point. I must discuss a few  
8 matters with the lawyers. I will ask you to retire  
9 to the jury room, but do not start your deliberations  
10 yet. I will call you back again.

11 The jury is excused.

12 (Jury leaves courtroom.)

13 THE COURT: Are there any exceptions, Mr.  
14 Clayman?

15 MR. CLAYMAN: No, your Honor.

16 THE COURT: Mr. Katcher?

17 MR. KATCHER: No exceptions, your Honor.

18 I have a couple of requests, your Honor,  
19 not exceptions.

20 THE COURT: All right.

21 MR. KATCHER: I respectfully ask your Honor  
22 to possibly re-emphasize the fulfillment of the  
23 conspiracy relates to the dates set forth in the  
24 indictment, because there has been an interchange  
25 of this 1971, 1972 situation, in connection with

1 that the defendant is not being charged with any  
2 crime or anything that may have occurred in 1971 and  
3 1972, and that should not play any part basically  
4 on whether there was a violation of the allegations  
5 contained in count 1 of the conspiracy.

6 THE COURT: I will say it once again. I think  
7 I said it, and I think you are asking for another  
8 summation. I will emphasize it only for that  
9 reason. There was a lot of testimony on subsequent  
10 offenses and I just want to make sure that their  
11 attention is drawn to the period in the indictment  
12 and no other.

13 (continued next page.)

14

15

16

17

18

19

20

21

22

23

24

25

ig;pc 1  
take 5am;1  
2

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. KATCHER: I have one further request and that is the failure of the Government to produce any witnesses under its control who were familiar with the facts as contained in the indictment.

THE COURT: Well, there is no proof that any witnesses under the Government's control --

MR. KATCHER: Except there was reference made to certain special agents who interviewed and consulted with the witnesses.

THE COURT: And? Would that be admissible into evidence?

You have the right to ask for the witnesses --

MR. KATCHER: I know I have the right to ask for the witnesses, but that wasn't my function.

THE COURT: I beg your pardon?

You cannot ask me to charge on an absent witness who has no testimony to give.

MR. KATCHER: We have this situation contained in the indictment where co-conspirators are named. Your Honor handled that well in redacting certain references to the defendant --

THE COURT: Only because I couldn't --

MR. KATCHER: I say your Honor handled it very well and there is no criticism with that, obviously.

1                   But, in the same indictment, there were  
2                   individuals, four in total, named as co-conspirators,  
3                   but not defendants, who are obviously under the  
4                   control of the Government.

5                   THE COURT: Why is it obvious?

6                   MR. CLAYMAN: Three of them are dead, your  
7                   Honor.

8                   MR. KATCHER: Well, how would I know that?  
9                   How would the members of the jury know that?

10                  THE COURT: You didn't ask the question. Why  
11                  did you not ask the Government to produce them?

12                  MR. CLAYMAN: Be glad to, Mr. Katcher.

13                  THE COURT: There is only one inference I  
14                  can ask the jury to draw and that is on something  
15                  in the record. You have to show they are under the  
16                  control of the Government and that they have  
17                  testimony that is not cumulative and would add  
18                  something to the case and that all has to be at  
19                  the time of trial.

20                  Even if Mr. O'Grady, for example, were  
21                  with the Government in 1972, if the Government  
22                  showed Mr. O'Grady was not with the Government  
23                  at the time of trial, then he was not under their  
24                  control and I would, of course, have directed the  
25                  Government to find him and bring him in if you had

1 made that request. But no such request was made.

2 MR. KATCHER: I acknowledge that no such  
3 request was made.

4 THE COURT: What would he have said?

5 "I have interviewed all these people and they  
6 said they were dealing in drugs."

7 You didn't want that. If you wanted that,  
8 you would have offered the report of O'Grady. You  
9 know that.

10 I don't think, "the absent witness" is  
11 appropriate here. I think it is appropriate when  
12 the record shows that the particular individual,  
13 whether named in the indictment or not -- it may have  
14 been "X" not named -- but it is shown that he is  
15 an important witness in the control of the  
16 Government. Then I would have said to the jury, "You  
17 decide whether he is in the control of the Government."

18 But here, how can they decide that? There  
19 is nothing in the record.

20 I have given "absent witness" charges. As a  
21 matter of fact, there was a question of doubt raised  
22 in Judge Medina's mind in one of the opinions where  
23 I was affirmed recently, where the defendant, in the  
24 summation, said, "Why didn't the Government bring  
25 so and so? Why didn't the Government bring in so and

1 so"? And I said, "You decide whether the Government  
2 should have brought in so and so" but I said, "The  
3 defendant has the right of subpoena, and you decide  
4 whether he should have brought in so and so."

5 I think it is an appropriate charge.

6 If a lawyer says that information, I say,  
7 "I want you to know that the Government could have  
8 brought him in, sure, but I also want you to know  
9 the defendant has the right of subpoena."

10 I probably said a little more than that,  
11 "Why didn't he do it", which, if I said, I shouldn't  
12 have said, but, I don't remember.

13 Now here, Mr. Clayman says three of them  
14 are dead. Why didn't he have notice from you that  
15 you were going to say that so he could come in and  
16 say, "Here are the death certificates."

17 Now, I am assuming O'Grady is under their  
18 control but he cannot give any testimony. The only  
19 testimony he could have given is on statements of  
20 Wong, if Wong denied ever making them.

21 But, as I recall it, he finally said, "Yes,  
22 I said it."

23 No, that I must decline.

24 MR. KATCHER: Okay.

25 THE COURT: Seat the jury.

A53

(Jury entered jury box at 11:55 A.M.)

THE COURT: I will excuse alternates number

1 and 2. You are excused and you may take your  
outer clothing from the jury room. Only 12 jurors  
may deliberate.

Now, your lunch has been ordered, and if you  
wait in my office, you can pick up your lunch there  
and have it wherever you find it is comfortable to  
have it.

(Whereupon alternate jurors 1 and 2 were  
excused.)

THE COURT: You are about to be excused to  
deliberate on the matter before you and I again  
want to remind you that you are to consider the  
charge in the indictment, charges in the indictment,  
and only those charges.

The evidence prior to the time of the  
commencement of the conspiracy and subsequent is  
to be used only to the limited extent I indicated  
to you.

Now, would you please swear in the marshals?

(Whereupon, two deputy United States marshals  
were sworn by the Clerk of the Court at 11:57 A.M.)

THE COURT: The jury is excused to decide the  
matter before it.

1 I may say this before you go:

2 I'm going to excuse the lawyers and the  
3 litigants for lunch and I'm going to tell them that  
4 they need not return until about 1:30.

5 Now, during that period, I cannot answer  
6 any of your questions. Don't hesitate to write them,  
7 but I cannot decide these things alone. I have to  
8 take it up with the lawyers.

9 So, if you don't hear from me before 1:30,  
10 don't think I have forgotten about you or that I  
11 am disinterested in what you are doing. That is  
12 not the case.

13 However, I cannot do anything until 1:30.

14 So, have your lunch and begin your  
15 deliberations.

16 (Jury is excused.)

17 (Jury is excused for deliberations at 12  
18 o'clock Noch.)

19 THE COURT: Now, there are a few exhibits.  
20 I'd like the lawyers to agree on what has been  
21 marked in evidence.

22 THE CLERK: Just 3, your Honor.

23 THE COURT: Only three?

24 MR. KATCHER: The passport and the stipulation--

25 MR. CLAYMAN: Yes. Do you want me to leave

1                   THE COURT: Please seat the jury.

2                   (Jury entered jury box at 3:20 P.M.)

3                   THE COURT: The jury asked for definition  
4                   of conspiracy as related to charges 2 and 3.

5                   If I interpret the question correctly, you  
6                   wish to know whether, if the crime is completed,  
7                   the importation, whether the conspiracy charge  
8                   merges with it as if it were just one offense and  
9                   I see some members of the jury shaking their  
10                  heads.

11                  (Members of the jury nodding affirmatively.)

12                  THE COURT: Well, that may be a little  
13                  confusing to you.

14                  It does not merge.

15                  The crime of conspiracy, as I indicated, is  
16                  the agreement, the understanding between 2 or more  
17                  to violate the narcotics laws and the crime is  
18                  completed with the Government proves beyond a  
19                  reasonable doubt that the conspiracy is established  
20                  as set forth in the indictment for the objects set  
21                  forth in the indictment for the terms set forth  
22                  in the indictment; that the defendant, knowingly  
23                  and wilfully entered into the conspiracy and I  
24                  explained and defined what knowingly and wilfully  
25                  was and then, that some member of the conspiracy,

1       one of the conspirators, knowingly committed some  
2       overt act in pursuance of the purposes of the  
3       conspiracy which was the importation and dealing  
4       in opium and heroin.

5               Now, the overt act does not necessarily  
6       have to be criminal in nature like, the importation  
7       of the heroin or opium. And so that even if the  
8       crime is not completed, if all those elements have  
9       been established by the Government, the crime of  
10      conspiracy is complete.

11              When I say, "even if the crime is not completed."  
12       even if what we call the substantive crime, the  
13       importation is not completed, you may nevertheless  
14       find that the crime of conspiracy has been commit-  
15       ted.

16              Now here, the Government charges, in  
17       addition to conspiracy, that the crime was completed,  
18       the substantive crime of importing the opium in the  
19       one count and importing the heroin in the other.  
20       That goes beyond the agreement. That is a separate  
21       crime.

22              The Government says that the defendant know-  
23       ingly and wilfully brought into this country in  
24       January, 1970, heroin in one count and opium in  
25       the other.

1                   So, even if you find the Government proved  
2                   the substantive crimes by proof beyond a reasonable  
3                   doubt, to wit, in counts 2 and 3, it does not  
4                   preclude your finding that the defendant did enter  
5                   into a conspiracy with others to violate the  
6                   narcotics laws. They do not merge. They are  
7                   separate and distinct crimes. Each has its  
8                   essential elements, as I charged you.

9                   I hope I have helped you and not confused  
10                  you.

11                  Go back and deliberate further on it and  
12                  if you have any further questions, just write to me  
13                  again.

14                  (Jury excused at 3:35 P.M. for further  
15                  deliberations.)

16                  THE COURT: Any exceptions to the charge?

17                  MR. KATCHER: I take an exception.

18                  THE COURT: Please be specific about it.

19                  MR. KATCHER: Yes.

20                  I think your Honor omitted or failed to  
21                  tell the jury that there could be an abandonment  
22                  of the agreement which would have vitiating every-  
23                  thing pertaining to counts 2 and 3.

24                  THE COURT: Anything else?

25                  MR. KATCHER: That's it, your Honor.

1 THE COURT: Your exception is noted.

2 I appreciate your waiting around.

3 MR. KATCHER: We have no choice.

4 THE COURT: I have a hearing.

5 MR. KATCHER: Yes. I will be on the 6th  
6 floor.

7 THECOURT: No. I'd like you to wait here  
8 unless you have an engagement before Judge Judd.

9 MR. KATCHER: No. It is someone I know who  
10 is up there, but I will stay here.

11 THE COURT: Yes. I would appreciate it,  
12 because if you are not here, it makes it very  
13 difficult to assemble everyone.

14 (Recess taken.)

15 (continued next page.)

1 THE COURT: No. I don't think that that  
2 gives them enough.

3 Call in the jury and I will do the best I  
4 can with both lawyers objecting to it.

5 (Jury entered jury box at 4:15 P.M.)

6 THE COURT: The first question is:

7                   " When is it considered that drugs are  
8                   imported?

9 "Does it mean that the drugs must be  
10 physically removed from the ship or is it considered  
11 imported as long as the ship is docked in the U.S.A.?"

12 It is imported when the ship is docked at  
13 the pier.

14 It isn't necessary for the Government to  
15 prove that the drugs were taken off the ship.

16                   However, you must understand that guilt is  
17                   a personal thing, and the Government must prove  
18                   beyond a reasonable doubt that it was this  
19                   defendant that imported it; that he had either  
20                   actual or constructive possession of the drugs.

Now, actual possession means that the party had physical control and dominion over it. He could do what he wanted with it, destroy it, sell it, give it away.

25 Constructive possession means, though not in

1 actual possession, he had the authority to dispose  
2 of the drugs. He had control of it.

3 Now, it could be sole possession or joint.

4 My courtroom deputy Mr. Adler and myself,  
5 for example, if we owned some physical substance,  
6 we'll say -- well, what is of value?

7 JUROR NO. 1: Gold.

8 THE COURT: All right. Let's say gold.

9 You called it.

10 Let's say gold.

11 We both owned the gold. I had the right to  
12 dispose of it and so did he, but he had the gold  
13 in his actual possession, he would have physical  
14 possession. But, he would hold the gold for both  
15 so it would be joint.

16 The Government, in addition to proving that  
17 the drugs that came in on the ship, were imported  
18 or brought into this territory, when it docked at  
19 Pier 11, must also prove that Ernst Olsen had  
20 possession actual or constructive, of the drugs.

21 Now, I cannot answer questions that you  
22 ask.

23 You ask:

24 "The drugs that were brought onto the  
25 LEXA MAERSK on November, 1969, were brought by whom

1 and were placed aboard the ship?"

2 MR. KATCHER: That's in the testimony.

3 THE COURT: I beg pardon?

4 MR. KATCHER: It's in the testimony.

5 THE COURT: I say, I will read the testimony  
6 and you make up your own minds, because again, only  
7 you can decide what the testimony means and no  
8 one else.

9 I will start at page 41 line 2 and I must  
10 say that the testimony I am going to read is not  
11 -- does not agree exactly with what you ask, but I  
12 think it will be disjointed if I just pick pieces  
13 of it. So, I will read some of what you didn't  
14 ask for.

15 This is the direct examination of Mr. Wong  
16 by Mr. Clayman, beginning at line 2:

17 (Record read by the Court:)

18 THE COURT: I suspend at line 20 page 44.

19 The jury is excused for further deliberations.

20 (Jury is excused at 4:20 P.M.)

21 THE CLERK: Jury note marked Court exhibit  
22 4 for identification.

23 (So marked)

24 MR. CLAYMAN: One exception, your Honor, and  
25 that is that it was not clear to me, at least

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D. N.Y.  
★  
EASTERN DISTRICT OF NEW YORK  
AUG 15 1975

-----x  
UNITED STATES OF AMERICA :

-against- :

74 CR 627

ERNEST OLSEN, :

Defendant. :

United States Courthouse  
Brooklyn, New York

July 11, 1975  
10:00 a.m.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

RAYMOND STALKER  
ACTING OFFICIAL COURT REPORTER

1  
2 Appearances:

3 DAVID G. TRAGER, ESQ.  
4 United States Attorney  
4 for the Eastern District of New York

5 BY: CHARLES CLAYMAN, ESQ.  
6 Assistant United States Attorney

7 IRVING KATCHER, ESQ.  
8 Attorney for Defendant

9 - - -

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 THE CLERK: For sentencing, Ernest Olsen.

2 THE COURT: Will you note your name on the  
3 record for this proceeding?

4 MR. JENSEN: Peter Jensen.

5 THE COURT: Mr. Jensen, you were the interpre-  
6 ter throughout this trial?

7 MR. JENSEN: Yes.

8 THE COURT: Ernest Olsen, do you have anything  
9 to say before the Court imposes sentence on you?

10 THE DEFENDANT: I do not believe that you have  
11 a right to have me before this court.

12 I do not believe you have a right to have me  
13 before this court.

14 MR. KATCHER: Ask him why?

15 THE DEFENDANT: Because I have been kidnapped.  
16 The law has been broken several times by bringing me  
17 here.

18 THE COURT: Well, you must have read the  
19 Toscanino case.

20 THE DEFENDANT: No.

21 MR. KATCHER: Ask him what happened. I don't  
22 know what he's talking about.

23 THE COURT: How were you kidnapped?

24 THE DEFENDANT: I was kidnapped from a ship that  
25 was anchored outside of Panama.

1                   THE COURT: Who kidnapped you?

2                   THE DEFENDANT: The FBI, two FBI marshals.

3                   THE COURT: Who are the FBI marshals, can you  
4                   identify the individuals?

5                   THE DEFENDANT: Yes. I could if I saw them  
6                   again.

7                   THE COURT: What do they look like, first of  
8                   all, how many were there?

9                   THE DEFENDANT: There's two marshals.

10                  THE COURT: Two marshals?

11                  THE DEFENDANT: Two marshals.

12                  THE COURT: FBI?

13                  THE DEFENDANT: Two U.S. Marshals.

14                  THE COURT: Where did the marshals come from,  
15                  where were they stationed?

16                  THE DEFENDANT: They brought me to Panama. So  
17                  I guess they were stationed there.

18                  THE COURT: Let the record show he's speaking  
19                  English.

20                  THE DEFENDANT: I speak English but not very  
21                  well.

22                  THE COURT: They took you to the marshal's  
23                  office in Panama?

24                  THE DEFENDANT: Not to the marshal's office.

25                  THE COURT: Where did they take you?

.6L

1 THE DEFENDANT: To the police station.

2 THE COURT: Where?

3 THE DEFENDANT: In the Canal Zone.

4 THE COURT: Where in the Canal Zone?

5 THE DEFENDANT: In Panama.

6 THE COURT: Is there a street?

7 THE DEFENDANT: I'm not known there.

8 THE COURT: That's the first time you've ever  
9 been there?

10 THE DEFENDANT: Yes.

11 THE COURT: Now, they took you right off the  
12 ship, they came on the ship and took you off?

13 THE DEFENDANT: Yes.

14 THE COURT: Your own ship?

15 THE DEFENDANT: Not my own ship.

16 THE COURT: The ship which you were on?

17 THE DEFENDANT: A Danish ship.

18 THE COURT: Weren't you a seaman on that Danish  
19 ship?

20 THE DEFENDANT: I was a seaman.

21 THE COURT: What is the name of the ship?

22 THE DEFENDANT: CHASTNE MAERSK.

23 THE COURT: Spell it.

24 THE DEFENDANT: C-H-A-S-T-N-E M-A-E-R-S-K.

25 THE COURT: Where were you on board the ship

1 when they came on board ship?

2 THE DEFENDANT: I was sleeping in my room, 4  
3 o'clock in the morning. I wake up and --

4 THE COURT: Did you have this room by yourself  
5 or was there another seaman there?

6 THE DEFENDANT: I was alone.

7 THE COURT: Alone?

8 THE DEFENDANT: Yes.

9 THE COURT: And did anybody see them take you  
10 off the ship?

11 THE DEFENDANT: Yeah.

12 THE COURT: Who saw them take you off the ship?

13 THE DEFENDANT: Some of the crewmembers.

14 THE COURT: Name some of the crewmembers?

15 THE DEFENDANT: The captain.

16 THE COURT: The captain, what is his name?

17 THE DEFENDANT: I don't remember. It is  
18 written in my book.

19 THE COURT: Mention some of the people on board  
20 ship.

21 MR. KATCHER: Do you have the Judge's question,  
22 Mr. Jensen?

23 MR. JENSEN: Yes.

24 THE DEFENDANT: The watchman on duty that night  
25 it was 4 o'clock in the morning. They come in and

1 arrest me. Most of the people was sleeping.

2 THE COURT: But who saw them take you off the  
3 ship?

4 THE DEFENDANT: The watchman and the captain.

5 THE COURT: That is for sure?

6 THE DEFENDANT: That's for sure.

7 THE COURT: Did they try to stop the marshals  
8 from taking you off the ship?

9 THE DEFENDANT: No. They told the captain I  
10 was under arrest.

11 And the captain believed they, maybe they have  
12 a right to do so. But, I do not believe so.

13 THE COURT: And what did the marshals look like?

14 THE DEFENDANT: One of them had -- around age  
15 between 50 and 60 years old, red hair and about 170  
16 centimeters in height.

17 THE COURT: This was in the Canal Zone of course,  
18 the United States?

19 THE DEFENDANT: It was not inside the Canal  
20 Zone. It was outside the Canal Zone, Balboa.

21 THE COURT: Did you tell your lawyer this at  
22 any time previously?

23 THE DEFENDANT: It was the very first thing I  
24 stated when I was brought here to New York. But, the  
25 United States Attorney would not show my passport to

1 the Danish consulate stating my passport was on a  
2 sight-seeing tour of Washington.

3 THE COURT: Did you ever move before this  
4 Court --

5 MR. KATCHER: No, your Honor. I couldn't get  
6 any verification. I was told about this a long time  
7 ago, your Honor. I spoke to a Mister, I think a  
8 Mr. Branigan who was at the time one of the United  
9 States Attorneys from the Southern District.

10 He had some knowledge but he had nothing  
11 official as to this, other than that he knew Mr. Olsen  
12 had been brought from somewhere in the Canal Zone.

13 After appearing in the Magistrate's Office  
14 there and then being transported from there to Miami  
15 and from Miami to New York.

16 THE COURT: Where was he arrested?

17 MR. CLAYMAN: In the Canal Zone. There was an  
18 arrest warrant.

19 This was an arrest by the United States --

20 MR. KATCHER: Mr. Branigan stated exactly what  
21 Mr. Clayman just indicated. It was his understanding  
22 that Mr. Olsen was arrested in the Canal Zone.

23 That the ship, he believed, this is all hearsay  
24 naturally, that he believed that the ship was situated  
25 in the Canal Zone and there was a boarding on the ship.

\* \* \*

1           But he didn't know anything beyond that other than his  
2           appearing here and speaking to --

3           THE COURT: We don't have to go through this.

4           I do not find any credible evidence to indicate  
5           that this ship was not in the Canal Zone when the  
6           arrest warrant was executed.

7           The motion to dismiss and vacate the verdict  
8           and dismiss the indictment is denied.

9           MR. KATCHER: I might say something in connec-  
10           tion with that.

11           THE COURT: Mr. Clayman, if the Government could  
12           be heard for one moment?

13           MR. KATCHER: Our position is, I don't think there  
14           is credible evidence or any issue here at all that the  
15           defendant had waived any attack upon the jurisdiction  
16           of the Court --

17           THE COURT: I would think so. But, I want to  
18           tie up Toscanino.

19           MR. CLAYMAN: I want the Government's position  
20           on the record.

21           THE DEFENDANT: The ship logs, that should be  
22           evidence enough.

23           THE COURT: Do you have it?

24           THE DEFENDANT: It could be brought here.

25           THE COURT: That's not before me.

1                   The claim was never made before and I won't  
2                   hear it now.

3                   THE DEFENDANT: I tried it many times, to put  
4                   in a claim. It's not my fault. It was the very first  
5                   thing I stated when I came to New York.

6                   THE COURT: Not before me.

7                   MR. KATCHER: As I said. I heard about this  
8                   several months ago, your Honor, and I spoke to  
9                   Mr. Branigan and I have tried.

10                  THE COURT: You heard about it before the trial?

11                  MR. KATCHER: Oh, yes, your Honor.

12                  But, I had nothing to do, nothing of substance.  
13                  Using your words, anything credible.

14                  THE COURT: I'm using the Toscanino opinion.

15                  MR. KATCHER: So other than the hearsay state-  
16                  ment from him or the statement made by Mr. Olsen, the  
17                  information obtained from Mr. Branigan, I tried to  
18                  get information on my own. But, I couldn't locate  
19                  his ship. I didn't know where it was located.

20                  The Danish consulate tried to help me.

21                  The Danish consulate did tell me he was brought  
22                  off before a Magistrate in the Canal Zone.

23                  THE COURT: Where was he? He says he was  
24                  arrested and he calls it an abduction. The Government  
25                  calls it an arrest.

A72

1 MR. KATCHER: There's nothing that I was able  
2 to ascertain where in truth and fact he was at the  
3 time he was seized by the United States marshals.  
4 I assume --

5 THE COURT: This is a case that the defendant  
6 must show credible evidence before you're entitled to  
7 a hearing.

8 MR. KATCHER: I am well aware of that. I could  
9 have made an application on paper, but it would be  
10 exactly as you say, devoid of competent or some basis  
11 of credibility, other than a hearsay statement.

12 So that I was for the purposes of the record,  
13 I was advised of it. So there shouldn't be any mis-  
14 understanding later, if the defendant says so, I was  
15 not informed of this --

16 THE COURT: Yes?

17 MR. KATCHER: He did tell me that when he was  
18 brought here to the airport from Miami, Florida.

19 The Immigration officials refused to permit  
20 the United States marshals to allow him to board a  
21 plane to New York for entry into the United States.  
22 It was only when the United States marshals, I assume  
23 they were marshals, your Honor --

24 THE COURT: Yes?

25 MR. KATCHER: Threatened to arrest the Immigration

1 officers for interfering with the Governmental autho-  
2 rity and something happened which permitted them to  
3 board the plane.

4 THE COURT: That doesn't lend any substance to  
5 the claim at all. They tell the Immigration officers  
6 all the time about admitting people into the United  
7 States. This is not the first occasion which somebody  
8 was brought into the country that was refused entrance  
9 even though in the company of law officers.

10 It happened in the Toscanino case.

11 MR. KATCHER: I'm aware of the case.

12 THE COURT: So?

13 MR. KATCHER: I mean for the purposes of the  
14 record I don't want the defendant at some time in the  
15 future to say that nothing was brought before the  
16 Court's attention as to what he related to me. But,  
17 the proof I have, I haven't been able to get any. But,  
18 as the observation your Honor made about the Immigra-  
19 tion officers, naturally that takes place constantly.

20 THE COURT: Ernest Olsen, do you have anything  
21 further to say before the Court imposes sentence on  
22 you?

23 THE DEFENDANT: No, I don't have anything.

24 THE COURT: Mr. Katcher?

25 MR. KATCHER: If your Honor will please, your

United States of America vs.

FILE - A74 U.S. District Court

IN CLERK'S OFFICE U.S. DISTRICT COURT ED. N.Y. Eastern District of New York

DEFENDANT

ERNEST OLSEN

JUL 15 1975

DOCKET NO. 74 CR 6827

TIME A.M.

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-255 (6-72)

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH 7 DAY 11 YEAR 1975

COUNSEL

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Irving Estabrook, Esq.

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,  NOLO CONTENDERE,  NOT GUILTY

NOT GUILTY. Defendant is discharged

There being a finding/verdict of

GUILTY, as charged in Counts 1, 2 and 3

FINDINGS &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating 7-21, U.S.C. Sec. 173, 184 and 7-18, U.S.C. Sec. 2, in that on or about and between January 1, 1969 and June 30, 1970, both dates being approximate and inclusive, and on or about January, 1970, the defendant with others, wilfully, knowingly, unlawfully, did combine, conspire, confederate and agree to violate 7-21, U.S.C. Sec. 173, 174, and the defendant fraudulently and knowingly did import and bring into the U.S. quantities of heroin and opium, notwithstanding, notwithstanding, why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years on each of counts 1, 2, and 3. Said terms to run concurrently.

SENTENCE  
OR  
PROBATION  
ORDER

SPECIAL  
CONDITIONS  
OR  
PROBATION

ONLY COPY AVAILABLE

A75

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- vs -

ERNST OLSEN

RECEIVED  
U.S. DISTRICT COURT  
JUL 11 1975  
TIME AM P.M.  
X NOTICE OF APPEAL  
File No: 74 CR 627

Notice is hereby given that the defendant

ERNST OLSEN hereby appeals in forma pauperis  
to the United States Court of Appeals for the Second Circuit  
from the final Judgment entered in this proceeding on the

11th day of July 1975

Dated: Brooklyn, New York

July 11, 1975

By Direction of the Court

LEWIS ORGEL, CLERK  
U.S. District Court  
Eastern District of New York  
on behalf of the defendant

STATE OF NEW YORK )  
: ss.  
COUNTY OF RICHMOND )

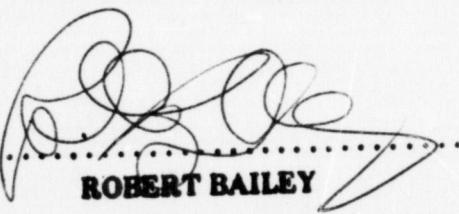
ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 2 day of Sept, 1975 deponent served the within by upon Attorney

attorney(s) for Appellee

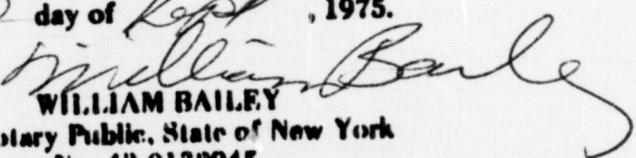
in this action, at

225 Cadman Plaza E  
Brooklyn, NY

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
ROBERT BAILEY

Sworn to before me, this  
day of Sept, 1975.

  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1976